

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #14	CCRB Case #: 201605109	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/04/2016 6:21 PM	Location of Incident: Grand Concourse between East 173rd Street and East 174th Street	Precinct: 44	18 Mo. SOL 12/4/2017	EO SOL 12/4/2017	
Date/Time CV Reported Sat, 06/04/2016 6:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/13/2016 12:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Diaz	28347	940091	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Patrick Mckee	06526	958907	044 PCT
2. POM David Ferrara	19240	958586	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Diaz	Force: Police Officer Daniel Diaz struck § 87(2)(b) with a vehicle.	

Case Summary

On June 4, 2016, § 87(2)(b) and § 87(2)(b) each independently called IAB to file the following complaint on behalf of § 87(2)(b) generating original log number 2016-20027. On June 6, 2016, § 87(2)(b) also called IAB to report the incident, generating original log number 2016-20203. The CCRB received the complaint on June 13, 2016.

On June 4, 2016, at approximately 6:21 p.m., Police Officer Daniel Diaz, Police Officer Patrick Mckee, and Police Officer David Ferrara, all of the 44th Precinct, were driving northbound on the Grand Concourse in the Bronx in pursuit of a large group of individuals who were riding motorcycles, dirt-bikes, ATVs, and mopeds and who were committing various traffic infractions. PO Diaz was driving the marked RMP. The large group turned right at the intersection with Mt. Eden Parkway, but § 87(2)(b) who was riding a moped, continued driving northbound on the Grand Concourse. PO Diaz pursued § 87(2)(b) and pulled alongside him in the two left-hand “express” lanes. PO Diaz and PO Mckee verbally instructed § 87(2)(b) to pull over. PO Diaz attempted to turn in front of § 87(2)(b) and the RMP collided with § 87(2)(b)'s moped (**Allegation A**). § 87(2)(b) fell to the ground and sustained injuries to his left arm and left leg (BR01).

§ 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b) (BR02).

The investigation obtained two surveillance videos depicting the collision, SnagIt #1 and SnagIt #2 (BR03; BR04), embedded below:



2016-07-06_12-07-49.mp4



2016-10-12_7-27-49.mp4

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On October 15, 2016, the NYC Comptroller’s office confirmed that no Notice of Claim had been filed regarding the incident (BR05).

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- § 87(2)(b)
§ 87(2)(b)

- § 87(2)(b) refused to provide his date of birth, and the BADS database showed prior arrests for multiple individuals named § 87(2)(b). As a result, the undersigned could not accurately search the OCA database for his prior criminal convictions.
- A search of the BADS database showed no previous arrests for anyone named § 87(2)(b). As a result, the undersigned could not search the OCA database for her prior criminal convictions.

Civilian and Officer CCRB Histories

- This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (BR09; BR10; BR11). As § 87(2)(b) refused to provide his date of birth, the undersigned could not determine if he was involved in any of the prior CCRB complaints involving individuals named § 87(2)(b) (BR12).
- PO Daniel Diaz has been a member of the NYPD for ten years and has had nine previous CCRB allegations involving seven cases, including four force allegations, none of which was substantiated (see officer history).

Potential Issues

- The investigation began trying to reach § 87(2)(b) by phone and by mail on June 20. § 87(2)(b) left a voicemail for the undersigned once, but the investigation was otherwise unable to contact him. On August 26, the undersigned went to § 87(2)(b)'s residence and delivered a please-call letter to his grandfather. § 87(2)(b)'s mother subsequently called the undersigned to explain that § 87(2)(b) no longer lived at the residence with her. She confirmed that he had received please-call letters in the past and was aware of the investigation. She provided his new address and a phone number for his girlfriend. The undersigned ultimately obtained a phone statement from § 87(2)(b) on August 31. § 87(2)(b) subsequently scheduled and missed two appointments to provide an in-person statement at the CCRB. As a result, the investigation was unable to obtain a sworn statement from § 87(2)(b).
- The investigation obtained statements from three independent witnesses: § 87(2)(b), § 87(2)(b), and § 87(2)(b) (BR13; BR14; BR15). § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Findings and Recommendations

Allegations not pleaded

- **Discourtesy:** In his phone statement, § 87(2)(b) alleged that PO Mckee used profanity when ordering him to pull over. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation A—Force: Police Officer Daniel Diaz struck § 87(2)(b) with a vehicle.**
It is undisputed that PO Diaz's RMP collided with § 87(2)(b)'s moped, causing § 87(2)(b) to fall to the ground.
The surveillance footage from 1684-1686 Grand Concourse, embedded above and titled "SnagIt #1," clearly shows the collision between the moped and the RMP. The investigation

prepared a slow-motion version of this clip, embedded below and titled “SnagIt #3,” which shows the moment of the collision (BR16):



2016-11-19_15-18-10.mp4

When the RMP and the moped first appear from the left side of the frame, the RMP is clearly traveling in the left lane of the express lanes section. § 87(2)(b)'s moped appears to be traveling atop the broken white lines between the left and right lanes of the express lanes section. When the two vehicles first come into view, the moped's rear wheel is approximately level with the front passenger wheel of the RMP. In less than one second, the RMP's front passenger window draws level with § 87(2)(b). However, the RMP does not maintain this position relative to § 87(2)(b). It continues to move past him, such that § 87(2)(b) is level with the RMP's rear passenger window within that same second. At the same time, the front of the RMP begins to veer across the broken white lines and into the right-hand lane. Within the same second, the rear passenger section of the RMP collides with § 87(2)(b). Fewer than two seconds elapse from the time the RMP's front passenger window draws level with § 87(2)(b) to the time that the RMP collides with him. § 87(2)(b) falls to the ground and he slides forward on the pavement along with the moped. The RMP comes to a stop beside him. At this point, the RMP is in the right-hand lane. The RMP's turret lights are off throughout the entirety of the footage.

§ 87(2)(b) recounted that he had just obtained the moped from his uncle on the date of the incident, and that he was driving home from his mother's residence at the time of the incident (BR17). He claimed that he was not a member of the roving band of motorcyclists, but he made multiple inconsistent statements regarding how he came to be traveling within the group. He variously said that he first saw the roving band near East 168th Street, near East 170th Street, and at the intersection with Mt. Eden Parkway. He also indicated both that he was stationary and that he was in motion when the motorcyclists began to pass him from behind. He recounted being stopped at a red light at the intersection with Mt. Eden Parkway when the roving band passed him, and said both that police vehicles did and did not pass him at that point as they pursued the motorcyclists. He also admitted that he ran the red light at the intersection because he was afraid, but later claimed that he did not notice if the light was red or green.

§ 87(2)(b) drove in the right lane of the express lanes section. He estimated that he was traveling at 30 mph at the time. PO Diaz's RMP came beside him on his left side, and another RMP was behind him. § 87(2)(b) maintained the same speed and continued driving straight when the RMP came alongside him. PO McKee yelled, “Pull over motherfucker!” from the front passenger window of the RMP beside § 87(2)(b). § 87(2)(b) denied that PO Diaz said anything to him. The RMP struck § 87(2)(b)'s moped immediately after PO McKee yelled at him. The RMP struck the front of § 87(2)(b)'s moped.

§ 87(2)(b) protested that while PO McKee did instruct him to pull over, the RMP was “already on top of [him],” so he could not comply with PO McKee's instruction. He also said that the officers did not give him a chance to slow down, and that he probably would have been struck by the RMP even if he had done so.

In his memo book entry regarding the incident, PO Diaz wrote that § 87(2)(b) struck the rear quarter panel of the RMP when he attempted to flee (BR18). In the narrative portions of the arrest report and UF61 report, PO Diaz recounted that, when he pulled § 87(2)(b) over, § 87(2)(b) struck the RMP and damaged its rear quarter panel (BR02; BR19).

At his CCRB interview, PO Diaz recounted that he observed the band of motorcyclists commit numerous traffic infractions as he followed them on the Grand Concourse (BR20). Members of the group drove at a high rate of speed, weaved between lanes, switched between the express and service lanes, crossed the double yellow line into the southbound express lanes, and ran multiple red lights. They also performed stunts, such as wheelies and riding while standing on the seat, and were not wearing safety gear. PO Diaz also recounted seeing instances in which a rider was almost struck by a bus and in which riders nearly struck pedestrians who were crossing the Grand Concourse. PO Diaz specifically recalled seeing § 87(2)(b) run red lights, weave between lanes, and ride atop the median. PO Diaz believed the roving band posed a danger to the public.

PO Diaz announced the roving band over the radio. He confirmed at the CCRB interview that officers are not supposed to “chase” such a roving band and are prohibited from engaging in a “high-speed chase.” PO Diaz explained that he intended to “follow” the motorcyclists at a “safer distance” and to arrest or summons a rider if the rider stopped or if the officers could get him to pull over. When asked to describe the circumstances in which an officer can arrest a member of such a roving band, PO Diaz said, “Usually if they’re stopped or if it’s safe. They’re going at a safe speed perhaps.”

PO Diaz was a few car lengths behind the roving band when it turned right at the intersection with Mt. Eden Parkway. § 87(2)(b) ran the red light to continue north on the Grand Concourse, and PO Diaz also ran the red light to pursue § 87(2)(b). PO Diaz drove in the left express lane and § 87(2)(b) drove in the right express lane. PO Diaz accelerated to catch up to § 87(2)(b). PO Diaz estimated that he was initially traveling at 35-40 mph and that § 87(2)(b) was traveling at 45-50 mph.

PO Diaz pulled up beside § 87(2)(b) so that § 87(2)(b) was level with the open front passenger window. PO Diaz and PO McKee yelled at § 87(2)(b) to pull over, and PO Diaz gestured at § 87(2)(b) by pointing to the right side of the road. PO Diaz believed that § 87(2)(b) heard the instructions because § 87(2)(b) looked at him and smiled. PO Diaz could not recall the location at which he first came alongside § 87(2)(b) and yelled at him. PO Diaz recounted that § 87(2)(b) began to decelerate at this point and that he believed § 87(2)(b) was going to stop.

PO Diaz decided to try to “box in” § 87(2)(b) by angling the RMP to the right in front of § 87(2)(b). PO Diaz confirmed that he veered right in order to block § 87(2)(b)’s path but denied that he intended to strike § 87(2)(b) with the RMP. He said, “I just want to block his path cause I wanted to get him to stop.” He also said, “I intended to block his path to stop him from proceeding further.” PO Diaz said that he was attempting to “coast in front of” § 87(2)(b) but that he was also trying to place his vehicle “a far enough distance” away so that § 87(2)(b) would have room to stop. He hoped that § 87(2)(b) would stop after seeing that he could not continue driving straight. PO Diaz explained that by “coasting,” he meant that was not pressing the gas pedal at the time. He recounted, “Basically I let the car coast. So if I’m gonna cut in front of him, I don’t wanna get speed for that purpose. I didn’t want to run him over. So I want the car just to coast. Little power as possible. It’s already been proven by science that the slower you go, the less likelihood of any injury or any kind of impact. Like, my goal is not to hurt the person. I just wanted—I just want to get the subject to stop.”

PO Diaz could not recall how far he traveled from the point at which he first pulled alongside § 87(2)(b) to the point at which he began trying to box him in. When asked how long he drove beside § 87(2)(b) yelling at him to pull over before he began trying to pull in front of him, PO Diaz said, “Like a minute or two. More or less. I don’t know.” When the investigator asked PO

Diaz if he was certain of the estimate of 1-2 minutes, PO Diaz said, “Yeah. It was for, it wasn’t that—it was brief but not that brief. I was trying to tell him, you know—give him a chance to stop.”

PO Diaz believed that § 87(2)(b) suddenly accelerated when PO Diaz angled the RMP to the right because he heard § 87(2)(b)’s moped’s engine “roar.” PO Diaz said that § 87(2)(b) accelerated “maybe a couple seconds” after PO Diaz began trying to box him in. However, when asked if he heard the engine roar before or after he yelled at § 87(2)(b) to pull over, PO Diaz said, “It was in the midst of it,” and “It was, like, simultaneous.” At this point, § 87(2)(b) was behind PO Diaz’s field of view. PO Diaz heard a noise from the rear passenger side of the vehicle and realized that § 87(2)(b)’s moped had collided with the RMP. He recounted, “I just pulled up in front of him. He sped up and hit the rear quarter panel of the RMP.” PO Diaz estimated that the RMP was traveling at 15-20 mph when it collided with § 87(2)(b).

When asked whether he based his decision to use the RMP to “box in” § 87(2)(b) upon specific training, the Patrol Guide, or his own judgment, PO Diaz said, “My own judgment how to do it, based on safety. I thought it would be the safest form, cause he was, again, appeared to be slowing down.” When asked why he chose to “box in” § 87(2)(b) instead of simply waiting for § 87(2)(b) to stop, PO Diaz said, “Based on the fact that he ran so many red lights, he probably wasn’t going to stop the traditional way of stopping. I guess the more routine way of stopping.” PO Diaz added that he was mindful of the possibility that § 87(2)(b) might strike a pedestrian, such as a child running to cross the street or to retrieve a ball.

PO Mckee could not recall how fast the RMP or § 87(2)(b) was traveling when the RMP crossed the intersection with Mt. Eden Parkway, nor could he recall how far behind § 87(2)(b) the RMP was at that point (BR21). He knew that the RMP pulled alongside § 87(2)(b) at some point north of Bronx Lebanon Hospital, which is located between Mt. Eden Parkway and E. 173rd Street. He believed the RMP reached § 87(2)(b) near a point where the service lanes can merge with the express lanes, and he thought this point was near E. 174th Street.

PO Mckee confirmed that he and PO Diaz verbally instructed § 87(2)(b) to pull over “a couple times” and also pointed at the right side of the road. He did not know how fast the RMP was traveling at this point but did not think it was “going that fast.” PO Mckee said that he thought § 87(2)(b) was going to pull over because he saw § 87(2)(b) start to pull to the right. However, he also said multiple times that he was not sure whether § 87(2)(b) was pulling over. He did not know if § 87(2)(b) accelerated, decelerated, or continued moving at the same speed at this time.

PO Mckee heard § 87(2)(b) make contact with the RMP but did not see the collision. He did not recall hearing the engine of § 87(2)(b)’s moped “roar” or “accelerate” shortly before the collision occurred. He could not recall for how long the RMP drove beside § 87(2)(b) before the collision, nor could he recall the amount of time between when he instructed § 87(2)(b) to pull over and the collision.

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 221-15, which took effect on June 1, 2016, requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if the suspect is not immediately apprehended. It expressly prohibits officers from employing certain tactics when attempting to stop a vehicle. These tactics include “ramming,” placing a moving NYPD vehicle in a position to be struck by a pursued vehicle, and driving alongside a pursued vehicle (BR22).

§ 87(2)(g)

Squad: 14

Investigator: _____ Daniel Giansante _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date